

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHARLES CHRISTOPHER GULAS,

Plaintiff,

v.

No. CIV 06-340 JH/LFG

DARREN WHITE, Sheriff of
Bernalillo County, *et al.*,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S
FINDINGS AND RECOMMENDED DISPOSITION AND
GRANTING MOTION FOR DISMISSAL OF UNKNOWN DEFENDANTS**

THIS MATTER comes before the Court on the Magistrate Judge's Findings and Recommended Disposition [Doc. 109], filed October 16, 2008, and on Plaintiff's Objections [Doc. 111] to the Findings and Recommended Disposition, filed October 23, 2008. The Court conducted a *de novo* review of those portions of the Magistrate Judge's Analysis and Recommended Disposition to which Plaintiff objects.

The Magistrate Judge found that Plaintiff Charles Christopher Gulas ("Gulas")'s claims against all parties designated as "unknown" should be dismissed for failure to make the requisite identifications. Gulas objected on grounds he had been prevented from discovery by orders of the Court. This argument was addressed in the Magistrate Judge's Findings, and the Court adopts the Magistrate Judge's findings on this issue and overrules the Objections.

The Fourth Amended Complaint was filed on June 24, 2008 [Doc. 75]. On July 9, 2008, Defendant Corrections Corporation of America ("CCA") filed its Motion to Dismiss [Doc. 79]. On

August 14, 2008, CCA moved for a protective order as to written discovery which Plaintiff served on July 29, 2008 [Doc. 87]. The Court granted the protective order on grounds that the motion was brought under FED. R. CIV. P. 12(b)(6), failure to state a claim, and that further factual discovery would not assist Plaintiff in resisting the motion at that point in the litigation.

On August 29, 2008, Defendant Darren White, Bernalillo County Sheriff, filed his Motion to Dismiss [Doc. 92], along with a Motion for Protective Order [Doc. 93] as to interrogatories which Plaintiff served on July 29, 2008. By Order dated September 19, 2008 [Doc. 98], the Court granted Defendant White's request for protective order on grounds, *inter alia*, that Gulas acknowledged in his complaint that the Bernalillo County Sheriff's Department was not the entity which operated the Metropolitan Detention Center at the time of the incidents in question.

Aside from these two sets of interrogatories, there is no indication that Gulas made any effort, including initiation of written or oral discovery, in an attempt to identify the unknown "John Does," many of whom were named as unknowns as early the date he filed his original complaint on April 24, 2006. In addition, Gulas did not avail himself of procedures to obtain discovery under FED. R. CIV. P. 56(f) subsequent to issuance of the protective orders. Thus, not only did Gulas fail to conduct any reasonable pre-filing investigation, he also failed to take reasonable steps after filing suit to learn the identities of the unknown defendants.

Gulas's Fourth Amended Complaint named ten different defendants, some of them named as groups of unknowns, or first-name-unknown. All defendants have now been dismissed from this case, as follows:

DARREN WHITE was dismissed from the case by Order dated October 20, 2008 [Doc. 110].

CORRECTIONS CORPORATION OF AMERICA and UNKNOWN OFFICERS OF THE CORRECTIONS CORPORATION OF AMERICA were dismissed from the case by Order dated August 29, 2008 [Doc. 94].

By Order dated August 6, 2008 [Doc.85], the Court dismissed with prejudice the claims against Defendant LANE BLAIR for unlawful detention and false imprisonment; all other claims against that defendant were dismissed without prejudice.

By Order dated July 2, 2008 [Doc. 77], the Court dismissed with prejudice Plaintiff's claims against the BERNALILLO COUNTY DETENTION CENTER OF THE CITY OF ALBUQUERQUE, the CITY OF ALBUQUERQUE, and DEPUTY SHERIFF HERNANDEZ.


In the July 2, 2008 Order, Plaintiff was directed to identify the remaining defendants identified as "unknown," including CORRECTIONS OFFICER HERNANDEZ OF THE CITY OF ALBUQUERQUE, UNKNOWN DEPUTIES OF THE BERNALILLO COUNTY SHERIFF'S DEPARTMENT, and UNKNOWN CORRECTIONAL OFFICERS OF THE CITY OF ALBUQUERQUE. Plaintiff having failed to identify these unknown parties, they are by this Order dismissed without prejudice.

Order

IT IS THEREFORE ORDERED that Plaintiff's Objections to the Magistrate Judge's Findings and Recommended Disposition are overruled, and the findings and recommendations are adopted by the Court;

IT IS FURTHER ORDERED that Defendant's Motion for Dismissal of Unknown Defendants [Doc. 99] is granted, and all claims against any "unknown" defendants still remaining in this case are hereby dismissed without prejudice;

IT IS FURTHER ORDERED that, all claims and all defendants having been dismissed, Plaintiff's complaint will be dismissed and Judgment will be entered in favor of all Defendants on all of Plaintiff's claims.


UNITED STATES DISTRICT JUDGE